

Appl. No. 10/009,083  
Atty. Docket No. AA399XM  
Amdt. dated 4/12/2005  
Reply to Office Action of 2/23/2005  
Customer No. 27752

### REMARKS

#### Claim Status

Claims 1 - 36 are pending in the present application. No additional claims fee is believed to be due. Claims 1 - 36 are rejected.

#### Rejection Under 35 USC §102(e) Over Gatto (6,570,054)

Claims 1 - 36 have been rejected over Gatto, US 6,570,054.

Gatto does not disclose an article having "a portion [which] comprises ... a skin care composition which is solid or semisolid at 40°C ..."

The Examiner refers to disclosure in Gatto describing the application of a skin care composition, (i.e., "prior to being applied to the article," as quoted by the Examiner) which, of course happens at a higher temperature when the composition is not solid, but liquid. This is not what is claimed.

The Examiner has not identified in Gatto where she finds disclosure of an article having a skin care composition on a surface thereof that is solid or semisolid at 40°C.

Therefore, Claims 1 - 36 are not anticipated by Gatto, and should be allowed.

#### Rejection Under 35 USC §103(a) Over the Combination of Osborn (WO 98/55158), Van Rijswijck (WO 99/12530), and Roe et al., (WO 99/22684)

Claims 1- 36 have been rejected under 35 USC §103(a) as being unpatentable over the above-cited references.

The Examiner has not shown where in any of these documents she finds all the elements of Claim 1, much less any of the other claims. The Examiner has not made out a *prima facie* case of obviousness. *See*, MPEP §2143.

For example, the Office Action states with respect to Osborn: "See the entire document ..." (Statement repeated for Van Rijswijck and Roe). However, nowhere in the Office Action does the Examiner show what specific portion of Osborn is relevant to specific Claim elements. General references to, e.g., "the third paragraph on page 21,"

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are insufficient to meet the standard for finding *prima facie* obviousness, which requires that each element be disclosed in a cited reference.

Conclusory statements such as "It would have been obvious to one skilled in the art at the time of invention to prepare an absorbent article comprising a body contacting surface and an absorbent core by containing a skin care composition because the prior art teaches it," do not meet the standard for actually finding such obviousness. The Examiner must state a reason one skilled in the art might be motivated or prompted to combine the three separate references.

Even if the conclusory statement identified above were true, it is irrelevant because what the Examiner says is obvious is not what is claimed.

Further, the Examiner states without support: "The prior art teaches absorbent article [*sic*], the composition, the immobilizing agent, the melting point of the temperature [*sic*] (solid or semisolid at 40 degrees Celsius), and all other ingredients" Nowhere does the Examiner state where she finds, e.g., "all other ingredients."

Therefore, the Applicant respectfully disagrees that "the burden of proof is upon applicants to show that instantly claimed subject matter is different and unobvious over those taught by prior art, as the Examiner maintains. Until a *prima facie* case of obviousness is made, the burden of proof remains with the Examiner. *See*, MPEP §2143.

Therefore, until a *prima facie* case of obviousness is established, the Applicant submits that Claims 1 – 36 are not rendered obvious by any or all of the cited references, and should be allowed.

#### Interview Summary

The Applicant respectfully submits that the interview summary is misleading. The Examiner asked the Applicant's representative for the "basis differences" between the claimed invention and the prior art. Not only is it highly inappropriate for an Examiner to ask an Applicant to make statements against interest, it is manifestly not the duty of an Applicant to do the Examiner's job. There is no option from a competent representative but to refuse to answer such a question from an Examiner.

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Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections.

Respectfully submitted,

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By

  
Signature

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